

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: TARIQ DAVIS,
Petitioner.

) S. Ct. Civ. No. 2022-0043
) Re: Super. Ct. Civ. No. 70/2009 (STT)
)

On Petition for Writ of Mandamus
Superior Court Judge: Hon. Kathleen Y. Mackay

Considered and Filed: August 30, 2024

Cite as: 2024 VI 2U

BEFORE: RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice;
IVE ARLINGTON SWAN, Associate Justice; and HAROLD W.L.
WILLOCKS, Associate Justice.

APPEARANCES:

Shawn E. Maynard-Hahnfeld, Esq.
Law Offices of Desmond L. Maynard
St. Thomas, U.S.V.I.
Attorney for Petitioner.

OPINION OF THE COURT

PER CURIAM.

This matter is before the Court on a petition for writ of mandamus filed by Tariq Davis. In his petition, Davis maintains that the Superior Court judge assigned to *Davis v. American Youth Soccer Organization*, Super. Ct. Civ. No. 70/2009 (STT) (the “Nominal Respondent”), has failed to rule on numerous motions for a period of years. For the reasons that follow, we grant the petition and direct the Nominal Respondent to issue rulings on all pending motions in the underlying proceeding within 60 days or take other meaningful action to further disposition of Davis’s case in that period.

I. BACKGROUND

On February 12, 2009, Davis, through his parents, initiated a civil action against numerous

defendants for injuries that allegedly occurred during a soccer practice he participated in. Although initially assigned to a different judge, due to various judicial retirements and recusals the case was reassigned to the Nominal Respondent on October 11, 2016. Shortly after the reassignment, Davis filed an October 27, 2016 emergency motion to disqualify counsel for two of the defendants, which those defendants opposed. On September 1, 2017, those defendants filed a motion to authorize their counsel to take a video-taped deposition of an alleged eyewitness, which Davis opposed on the same conflict-of-interest grounds that formed the basis for his still-pending motion to disqualify.

Despite the pendency of these and other motions, the Nominal Respondent did not issue any orders for nearly three years, except one order granting a routine extension of time. On March 11, 2019, the Nominal Respondent entered an order *sua sponte* scheduling the case for a status conference on April 9, 2019, and directing the parties to identify which pending motions were moot and the order in which the non-moot motions should be addressed. In his filing, the Petitioner identified 26 substantive motions that remained outstanding and requested that the Superior Court first rule on its emergency motion to disqualify since its disposition would affect other pending motions pertaining to discovery.

At the status conference, the Superior Court stated that it would refer the matter to mediation, and not rule on any pending motions unless mediation proved unsuccessful. The Superior Court memorialized its mediation referral in a written April 10, 2019 order. However, on October 1, 2019, Davis filed a motion to enforce the mediation order on grounds that one of the defendants had purportedly failed to appear. When the Superior Court did not rule on that motion, Davis filed a June 15, 2020 motion requesting a hearing in the case, and filed a second motion for a hearing on November 5, 2021, when the Nominal Respondent still did not issue any orders. In

the November 5, 2021 motion, Davis identified 35 substantive motions that were now pending in the case. The Nominal Respondent, however, still did not issue any orders, with Davis then filing a third motion for a hearing on May 13, 2022, urging that it address the emergency motion to disqualify and other pending motions expeditiously, noting that several witnesses had passed away or relocated in the intervening years.

Davis ultimately filed the instant mandamus petition with this Court on August 18, 2022. After the Nominal Respondent still failed to issue any orders in the underlying case, this Court issued an April 17, 2023 order that directed the defendants, and permitted the Nominal Respondent, to file an answer to the mandamus petition. However, neither the Nominal Respondent nor the defendants filed an answer with this Court. To date, the Superior Court record reflects that the Nominal Respondent has entered no orders in the underlying case since the April 10, 2019 mediation order.

II. DISCUSSION

This Court has jurisdiction over original proceedings for mandamus pursuant to title 4, section 32(b) of the Virgin Islands Code. “However, a writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances.” *In re Morton*, 56 V.I. 313, 319 (V.I. 2012). “To obtain a writ of mandamus, [the petitioner] must establish that his right to the writ is clear and indisputable and that he has no other adequate means to attain the desired relief.” *In re Fleming*, 56 V.I. 460, 464 (V.I. 2012). But “even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Moorhead v. Mapp*, 62 V.I. 595, 600 (V.I. 2015) (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004)).

We conclude that Davis has met his burden as to all three factors. “A party possesses a ‘clear and indisputable’ right when the relief sought constitutes a ‘specific, ministerial act, devoid of the exercise of judgment or discretion.’” *Fleming*, 56 V.I. at 464; *Morton*, 56 V.I. at 319; *In re People of the V.I.*, 51 V.I. 374, 387 (V.I. 2009) (quoting *Dunn-McCampbell Royalty Interest, Inc. v. Nat’l Park Serv.*, 112 F.3d 1283, 1288 (5th Cir. 1997)). As this Court has previously explained, the failure of a Superior Court judge to issue a ruling in a timely manner may rise to the level of a breach of a ministerial duty:

Because “the manner in which a court disposes of cases on its docket is within its discretion,” a trial court’s delay in ruling on a motion will generally not warrant mandamus relief. *In re Robinson*, 336 Fed. Appx. 171, 172 (3d Cir. 2009). “Nonetheless, mandamus may be warranted when a [trial] [c]ourt’s ‘undue delay is tantamount to a failure to exercise jurisdiction.’” *Id.* (quoting *Madden v. Myers*, 102 F.3d 74, 79 (3d Cir.1982)). In other words, “[w]hile it is a basic premise that an appellate court lacks the power to compel a trial judge to do a particular act involving or requiring discretion on his part, this Court is empowered to order a trial judge to exercise his discretion in some manner.” *O’Donniley v. Golden*, 860 S.W.2d 267, 269 (Tex. App. 1993).

In re Elliot, 54 V.I. 423, 429 (2010).

This Court has already held that the failure of a Superior Court judge to take substantive action for 18 months or longer may constitute a breach of the ministerial duty to issue a ruling in a timely manner. See *In re Gillette*, 64 V.I. 440, 444 (V.I. 2016); *Fleming*, 56 V.I. at 466; *Elliot*, 54 V.I. at 430-31. We recognize, of course, that in certain circumstances such a lengthy delay may be excused if there is a legitimate reason for the delay, such as when the parties file “a flurry of complex or frivolous motions.” *Fleming*, 56 V.I. at 466. Here, the parties certainly filed numerous motions in the case; this, however, cannot excuse the complete failure of the Nominal Respondent to issue any order at all for more than five years and no substantive order since the date of case reassignment. This is particularly true when, as here, the parties have designated a specific

motion—the emergency motion to disqualify counsel—as important and advised that its disposition may resolve other pending motions.

We also agree with Davis that he lacks any other adequate means of obtaining the relief sought other than mandamus relief from this Court. The breach of ministerial duty that Davis alleges—a failure to rule—is one that this Court cannot review on direct appeal, given that the Nominal Respondent’s continued failure to rule precludes entry of an appealable final judgment. *Fleming*, 56 V.I. at 466 (citing *Elliot*, 54 V.I. at 425). And because the Nominal Respondent has not issued any order for more than five years, despite the filing of multiple motions requesting a hearing, there are no practical avenues for attaining relief that have been untried. *See In re People of the V.I.*, 55 V.I. 851, 858 (V.I. 2011).

Finally, we conclude that issuance of a writ of mandamus is appropriate under the circumstances. “To determine whether a writ of mandamus is appropriate under the circumstances, we consider factors including, but not limited to, the public interest, the importance or unimportance of the question presented, and equity and justice.” *In re People*, 51 V.I. at 393 (collecting cases). The Supreme Court of the United States has recognized that the Due Process Clause of the Fifth Amendment guarantees the right to a speedy trial even in civil cases. *United States v. Eight Thousand Eight Hundred & Fifty Dollars*, 461 U.S. 555, 564 (1983). Moreover, the complete failure of courts to acknowledge—let alone rule on—dispositive motions for years necessarily causes the public to lose confidence in the Judicial Branch and its ability to dispense fair and impartial justice in a timely manner. Consequently, granting mandamus relief in this case would not simply further Davis’s private interests, but would “assist[] in the administration of justice.” *Elliot*, 54 V.I. at 432.

III. CONCLUSION

We find that Davis has a clear and indisputable right to have the Nominal Respondent rule on the pending motions in the underlying civil case since we cannot find any legitimate excuse for the more than five years of inaction. Furthermore, Davis lacks an adequate alternate means of obtaining redress. Accordingly, since the public interest and other considerations strongly support mandamus relief, this Court shall issue a writ of mandamus directing the Nominal Respondent to issue rulings on the emergency motion to disqualify counsel and all other substantive motions within 60 days of the date of this Opinion or take other meaningful action to further the disposition of Davis's case in that period.

Dated this 30th day of August, 2024.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Kobe S. Potter
Deputy Clerk II

Dated: August 30, 2024